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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,198	06/15/2001	Gregory J. Norsworthy	7311/US/NP	8393

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EXAMINER	
THAI, CANG G	

ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/882,198	NORSWORTHY ET AL.	
	Examiner	Art Unit	
	Cang G. Thai	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed on 1/19/2005 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-2, 4, 6, and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,189,944 (PICHE).

As for Claim 1, PICHE discloses a kiosk comprising:

a) a customer interface area (See Fig. 2- Element Bay Window),

b) a biological sample analysis and handling area (See Fig. 2 - Element 22),

c) a base product display area (See Fig. 2 - Counter / Blender),

d) at least one product additive storage area (See Fig. 2 - Element 10), and

e) and ingredient mixing and customer observation area (See Fig. 2 - Element Preparation Table).

As for Claim 2, PICHE discloses a biological sample disposal area as "a gray water drain apparatus is provided which drains gray water from hand sink (Element 22) through a first drain pipe (Element 60) (See Column 4, Lines 12-14).

As for Claim 4, PICHE discloses a kiosk is to be portable (See Fig. 1, Element 12 and Element 13).

As for Claim 6, PICHE discloses a base product storage area (Element 14).

As for Claim 8, PICHE discloses at least one product area is stocked with at least one of a dry inventory and a liquid inventory (Element 14).

As for Claim 9, PICHE discloses three separate units, including at least one of a customer interaction station (See Fig. 2, Element Bay

Window), an analysis station (See Fig. 2, Preparation Table), and a workstation (Fig. 2, Element 26).

Response to Arguments

4. Applicant's arguments with respect to claims 1-2, 4, 6 and 8-10 have been considered but are moot in view of the new ground(s) of rejection.

5. In response to applicant's argument that PICHE is non-analogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, a biological sampling analysis and handling area is broadly interpreted this as merely an area where a biological sampling analysis and handling is performed. A sink (Element 22) as an area is equivalent to the biological sampling analysis and handling area is capable to use in such manner. A product additive storage area is broadly interpreted as merely an area for storing. An engine compartment (Element 10) area is equivalent to a product additive storage area is broadly interpreted as merely a storage area to meet governmental regulatory requirements.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,189,944 (PICHE) as applied to Claim 1 above, and further in view of U.S. Patent No. 6,098,346 (MILLER ET AL).

As for Claim 3, PICHE discloses a kiosk configured as recited in Claim 1, except a kiosk is to be expanded or contracted.

MILLER discloses that it is well known to use system that can be expanded or contracted (Element 12). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the PICHE apparatus to incorporate the expandable structure of the MILLER apparatus such that the PICHE apparatus can be expanded or contracted in order to provide more or less internal accommodation, as taught by MILLER (Column 1, Lines 14-15).

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,189,944 (PICHE) as applied to Claim 1 above, and further in view of U.S. Patent No. 6,754,919 (LEAPHART ET AL).

As for Claim 5, PICHE discloses a kiosk configured to be locked (Element 54).

LEAPHART discloses that it is well known to have a custom cover to protect the kiosk (Column 1, Line 54). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the PICHE apparatus to incorporate the cover article of the LEAPHART apparatus such that the PICHE apparatus can be protected, as taught by LEAPHART (Column 1, Line 54).

10. Claims 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,189,944 (PICHE) as applied to Claim 1 above, and further in view of U.S. Patent No. 4,179,723 (SPENCER).

As for Claim 7, PICHE discloses a kiosk configured as recited in Claim 1, except wherein it is constructed from at lease one of wire shelving, stainless steel supports, plastic pins, and laminated wood and stainless steel shelving.

SPENCER discloses that it is well known to manufacture in the self-contained kiosk with steel support (Element 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to manufacture the PICHE kiosk with steel supports because it

would make such kiosk extremely attractive and secure from vandalism and theft, as taught by SPENCER (Column 3, Lines 24-25).

As for Claim 10, PICHE discloses a kiosk configured as recited in Claim 1, except for a computer.

SPENCER discloses that it is well known to incorporate a computer in a kiosk that stores client information specifically (Column 2, Lines 4-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to incorporate a computer into PICHE kiosk, to allow clients to obtain information about the individual profiles. While SPENCER does not discloses storing custom pet food information is merely an obvious design choice within the skill of one of ordinary skill in the art to store data about the good or service provided by the kiosk, as taught by SPENCER (Column 2, Lines 38-40).

As for Claim 11, PICHE discloses a kiosk configured as recited in Claim 1, except a graphic panels to advertise.

SPENCER discloses that it is well known to use an overhanging portion to advertise a kiosk without requiring drastic design changes (Column 3, Lines 2-3, and Element 26). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the PICHE kiosk to included the graphics panels of SPENCER illuminate advertising without requiring drastic design changed, as taught by SPENCER (Column 1, Lines 51-53).

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,358,546 (BEBIAK ET AL) in view of U.S. Patent No. 6,291,533 (FLEISCHNER).

As for Claim 12, BEBIAK discloses a method for marketing a customized food product for pet using a kiosk including at least one of a consumer interaction station, analysis station, and a workstation, including method comprising:

f) providing a questionnaire at the consumer interaction station (Element 104),

g) receiving a customized pet food product formula based on the questionnaire answers (Column 2, Line 52), and

h) preparing a sample of the customized product for the consumer (Element 126).

In fact, BEBIAK discloses all of the method steps (f)-(h) of Claim 12, except for an analysis of a biological sample for a pet at the analysis station.

FLEISCHNER discloses a method of performing an analysis of a biological sample (blood) from an animal to determine a suitable food product.

i) performing an analysis of a biological sample for a pet at the analysis station, and

j) receiving the biological sample at the analysis sample.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the BEBIAK system to include the analysis of biological material and use such analysis to determine a proper food product, as taught by FLEISCHNER (Column 2, Line 35).

As for Claim 13, BEBIAK also discloses storing result in the database (questionnaire) (Column 4, Line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to integrate FLEISCHNER dietary supplements (biological sample analysis) for each specific blood type into BEBIAK storing database and modify the database to determine a result of a customized pet food formula for each individual pet profile (Column 2, Lines 51-52).

As for Claim 14, BEBIAK also discloses using the pet profile stored to manufacture a customized pet food according to a customized pet food formula for re-orders (Column 3, Line 42). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to use BEBIAK database combining with FLEISCHNER dietary supplements for each specific blood type to determine a

formula for each individual pet profile for manufacturing re-orders product (Column 2, Lines 60-61).

As for Claim 15, BEBIAK also discloses preparing a custom product addictive to be added to a base formula by transparent material so that the user can observe the dry food ingredients as they are added to the pet food (Column 4, Lines 43-44). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to use BEBIAK database combining with FLEISCHNER dietary supplements for each specific blood type to determine a formula for each individual pet profile for preparing a custom product addictive to be added to a base formula so that a user can observe the dry ingredients as they are added to the pet food (Column 4, Lines 43-44).

As for Claim 16, it has same limitation to Claim 11, therefore, so it is rejected for the same reason set forth in Claim 11.

As for Claim 17, BEBIAK also discloses adding at least one of a dry product addictive and a liquid addictive to the base formula through control signals for the apparatus through a programmable logic control (PLC) to mix the dry and liquid ingredients together in preparation for extrusion (Column 4, Lines 56-60). It would have been obvious to one

of ordinary skill in the art at the time the invention was made, to use BEBIAK database combining with FLEISCHNER dietary supplements for each specific blood type to determine a formula for each individual pet profile to program a mixing of one dry and liquid ingredients together in order to manufacture a customized pet food product (Column 4, Lines 43-44).

As for Claim 18, BEBIAK also discloses result in the database (questionnaire) (Column 4, Line 2). FLEISCHNER discloses information of dietary supplements for each specific blood type. It would have been obvious to one of ordinary skill in the art at the time the invention was made, to integrate FLEISCHNER dietary supplements (biological sample analysis) for each specific blood type into BEBIAK storing database and modify the database to determine a result of a customized pet food formula for each individual pet profile (Column 2, Lines 51-52).

As for Claim 19, BEBIAK also discloses storing result in the database (questionnaire) (Column 4, Line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to perform an analysis of FLEISCHNER dietary supplements (biological sample analysis) for each specific blood type into BEBIAK storing

database and modify the database to determine a result of a customized pet food formula for each individual pet profile (Column 2, Lines 51-52).

As for Claim 20, which has the same limitations as in Claims 1, 12, 15, 17 and 18, respectively, therefore, they are rejected for the similar set forth in Claims 1, 12, 15, 17 and 18 above.

As for Claim 21, BEBIAK discloses generating feeding instructions and package labels to the customer (Element 128). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to integrate FLEISCHNER dietary supplements (biological sample analysis) for each specific blood type into BEBIAK storing database and modify the database to determine a result of a customized pet food formula for each individual pet profile (Column 2, Lines 51-52) and produce printed material such as a pamphlet or flyer having pet care description of the customized pet food formula; feeding recommendations, including specific recommendations for treats and supplements; and recommendations on veterinary care (Column 6, Lines 12-19).

As for Claim 22, BEBIAK discloses providing feeding instructions and package labels to the customer (Element

128). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to integrate FLEISCHNER dietary supplements (biological sample analysis) for each specific blood type into BEBIAK storing database and modify the database to determine a result of a customized pet food formula for each individual pet profile (Column 2, Lines 51-52) and produce printed material such as a pamphlet or flyer having pet care description of the customized pet food formula; feeding recommendations, including specific recommendations for treats and supplements; and recommendations on veterinary care (Column 6, Lines 12-19).

As for Claim 24, BEBIAK discloses presenting the customer with recommendations concerning frequency feeding regarding amount, and feeding methods (Column 6, Lines 15-16). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to integrate FLEISCHNER dietary supplements (biological sample analysis) for each specific blood type into BEBIAK recommendation concerning frequency of feeding amount and methods to tailored a desired nutritional balance for a pet of a specific age, gender and weight, at a particular time

of year, and having a specific health problem, such as, for example, a food allergy (Column 6, Lines 23-26).

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,358,546 (BEBIAK), U.S. Patent No. 6,291,533 (FLEISCHNER) in view of U.S. Patent No. 6,427,879 (CALDWELL).

As for Claim 23, BEBIAK and FLEISCHNER disclose a method for providing a customized food product as recited in Claim 20, except presenting the customer with a customized measuring scoop for the kibble and a custom-selected spoon for the customized additive.

CALDWELL discloses measuring device to comprised of fixed, known volumes, or simply convenient way for the transfer of material from one container into another without measuring the same (Column 2, Lines 31-34). Food package including feeding recommendations include specific recommendations regarding to amount to consume information BEBIAK produces for dog food includes information about how much a pet should eat would include a spoon to control the volume (Column 6, Lines 15-16). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to combine the teaching of BEBIAK and FLEISCHNER to customized a pet food formula with a specific feeding amounts with CALDWELL measuring

and dispensing device to control a proper amount to feed a pet while reducing or eliminating mess and inaccuracy and without sacrificing control (Column 2, Lines 11-13).

Response to Arguments

13. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, using a kiosk for marketing a customized pet food product is merely an intended used.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cang (James) G. Thai whose telephone number is (571) 272-6499. The examiner can normally be reached on 6:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CGT

4/6/2005

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